

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF NOVEMBER 20, 2013

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of November 20, 2013, are available online at www.co.merced.ca.us/planning/plancomarchive.html.

I. CALL MEETING TO ORDER

The regularly scheduled meeting of the Merced County Planning Commission was called to order at 9:00 a.m., on November 20, 2013, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Lynn Tanner- Chairman
 Commissioner Mark Erreca
 Commissioner Jack Mobley
 Commissioner Greg Thompson

Staff Present: William Nicholson, Assistant Development Services Director
 Ana Muniz-Laguna, Recording Secretary
 Dave Gilbert, Planner III

Legal Staff: Michael Calabrese, Deputy County Counsel

Commissioners Absent: Commissioner Rich Ford

III. APPROVAL OF MINUTES

MOTION: M/S MOBLEY-ERRECA, AND CARRIED BY A VOTE OF 4 – 0, THE COMMISSION APPROVE THE MINUTES FROM THE OCTOBER 09, 2013 HEARING.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP10-012 - FRV Vega Solar L.P. - To construct a 20 megawatt photovoltaic solar energy generation facility on 178.3 acres of agricultural land. The project site is located on the north and south sides of El Campo Road, east and west of Woo Road in the Los Banos area. The project area is designated Agricultural land use in the General Plan and zoned A-2 (Exclusive Agricultural). **DG**

Recommendations: The actions requested are to:

- 1) Recommend to the Board of Supervisors certification of the Environmental Impact Report; and;
- 2) Recommend to the Board of Supervisors adoption of the CEQA Findings of Fact, approval of the Mitigation Monitoring and Reporting Program, approval of Conditional Use Permit No. CUP10-012, and removal of the project site from the Agricultural Preserve, based on the 10 project findings and subject to the 13 conditions of approval and mitigation measures presented in the Staff Report.

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Dave Gilbert, Planner III, gave a PowerPoint presentation and summarized the Staff Report. He distributed a couple of handouts to the Commissioners, one being a revised Avian Protection Plan (Appendix F of the Final Environmental Impact Report), and the other an e-mail received this morning from the Grassland's Water District.

Commissioner Thompson asked if there was a well site on the project and Mr. Gilbert replied that he didn't believe so, there are simply small ditches and canals for drainage. He stated that in the future, the owners might possibly put in some wells. Commissioner Thompson asked if the future wells would be simply for water during construction and the cleaning of panels and Mr. Gilbert agreed that they would be.

Commissioner Mobley asked when the last time the property was used for grazing or growing crops and Mr. Gilbert replied that about year ago there were crops growing. He pointed out that there is a current restriction of water usage from the San Luis Water District, which prohibits proper irrigation on this land.

Mr. Michael Calabrese, County Counsel requested a clarification on the relationship of the new Avian Protection Plan dated November 20, 2013, versus the one that was included in the Final EIR. Mr. Gilbert invited Trevor Masinski, Director of Environmental Services with First Carbon Solutions MBA, to help discuss the nature of the new document. Mr. Masinski stated that he helped prepare the environmental document for the project and said that the primary distinction between the new Avian Protection Plan and the previous one was a specific reference to the Department of Fish and Wildlife's Guidance on Preparation of Avian Protection Plans. The previous Plan simply stated that they would agree to follow guidance in accordance with the guidelines, whereas the new Plan outlines specific steps on how the Avian Protection Plan will be followed.

Chairman Tanner asked that a 15 minute break be taken in order for the Commission to review the new documents.

Commission went on break at 9:13 a.m.

Commission came back from break at 9:27 a.m.

Mr. Calabrese spoke and stated that the updated version of the Avian Protection Plan was reviewed at the Staff level and confirmed the summary of the changes is accurate and felt comfortable moving forward with the public hearing.

The public hearing opened at 9:36 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:37 a.m.

MOTION: M/S MOBLEY-ERRECA, AND CARRIED BY A VOTE OF 4-0, THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT; AND

MOTION: M/S MOBLEY-ERRECA,, AND CARRIED BY A VOTE OF 4-0, THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF THE CEQA FINDINGS OF FACT, APPROVAL OF THE MITIGATION MONITORING AND REPORTING PROGRAM, APPROVAL CONDITIONAL USE

PERMIT No. CUP10-012, AND REMOVAL OF THE PROJECT SITE FROM THE AGRICULTURAL PRESERVE, BASED ON THE 10 PROJECT FINDINGS AND SUBJECT TO THE 13 CONDITIONS OF APPROVAL AND MITIGATION MEASURES PRESENTED IN THE STAFF REPORT TO READ AS FOLLOWS:

Community and Economic Development Department Conditions:

1. Conditional Use Permit No. CUP10-012 is granted for the construction of a 20 megawatt solar photovoltaic electrical generating facility on three parcels totaling 178.3 acres. The project would involve the installation of a solar PV array system (solar PV modules, supports, inverters, foundation, and a direct buried cabling system).
2. The solar photovoltaic electrical generating facility shall be located, developed and operated in a manner described on the approved plot plan, mitigation measures, mitigation monitoring and reporting program, and conditions of this permit. Any changes or proposed modifications to the approved project would be based on a written request of the applicant to the Community and Economic Development Department Director.
3. All mitigation measures identified in the Environmental Impact Report are adopted and incorporated by reference as project conditions.
4. The project shall comply with all applicable regulations administered by the County Fire Department, Environmental Health Division, Planning & Community Development, and Public Works Departments.
5. For the purpose of conditions monitoring, an inspection fee in the amount of **\$972** shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant / property owner at the established hourly rate at the time of the inspection. This permit will not be considered valid until the conditions monitoring fee has been paid.
6. The applicant shall obtain all necessary permits, and comply with all applicable regulations administered by Federal and State agencies.

County Counsel

7. INDEMNITY AND HOLD HARMLESS AGREEMENT:

AKT Santa Nella Solar Investors I, LLC has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter "COUNTY") from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of AKT Santa Nella Solar Investors I, LLC.

AKT Santa Nella Solar Investors I, LLC liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of AKT Santa Nella Solar Investors I, LLC their employees, subcontractors, agents, and officers. The duty shall extend to any allegation or claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of COUNTY. This duty shall arise at the first notice of filing a lawsuit, claim, petition, or allegation of liability against COUNTY. AKT Santa Nella Solar Investors I, LLC will on request and at its expense, defend any action suit or proceeding arising hereunder. This clause and shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise during the term of this Agreement, but shall also apply to all such claims and the like, after the term of this contract, including but not limited to actions arising from public interest, land use and environmental legal actions, brought against the COUNTY following Conditional Use Permit No. CUP10-012 approval, modification, denial, or the exercise or exhaustion of administrative appeals. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's fees and staff time incurred by the offices of COUNTY counsel. COUNTY shall have full discretion to select legal counsel of its own choosing to represent COUNTY, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the COUNTY determines the Claim may reasonably require.

This clause for indemnification shall be interpreted to the broadest extent permitted by law.

Public Works/Roads Division

8. The applicant shall enter into a Road Maintenance Agreement with the Department of Public Works, which stipulates that after completion of project construction activities all County roadways that were used in the transport of import material to the project site shall be restored to a like or better condition.
9. The applicant shall construct a rural agricultural driveway approach at each proposed access onto Woo and El Campo Roads in accordance with Chapter 7, Driveways, of the Merced County DPW Improvement Standards & Specifications. Said construction shall require an encroachment permit from DPW.
10. No transmission poles shall be located within the County road right-of-ways.

Division of Environmental Health

11. Any hazardous material stored on-site over threshold quantities (55 gallons, 200 cu. ft., or 500 pounds) shall require a hazardous materials business plan (HMBP) with the Division of Environmental Health.

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12. As part of the building permit process a plot plan drawn to scale shall be submitted showing proposed well and septic disposal system locations. The plan shall include a 300% leach line replacement area and at least one soils report and percolation test performed in the sewage disposal system location. The septic tank and leach line area, including the replacement area shall be unpaved and protected from compaction. Portable toilets shall be provided during construction activities. Construction personnel shall be prohibited from using the O & M building restrooms.
13. Water wells shall be installed in accordance with the Merced County Well Ordinance.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Mr. Nicholson thanked the Commission for their deliberation and discussion of the General Plan Update and appreciated their recommendation to the Board of Supervisors.

VIII. COMMISSIONERS COMMENTS

Chairman Tanner informed that this will be Mr. Calebrese's last meeting and thanked him for all of his work and support.

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:45 a.m.